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Attorney for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

JOSHUA S. KIRKPATRICK, Personal	)	
Representative of the Estate of Alison	)	Case No.
Marie Kirkpatrick,	)	
	)	COMPLAINT
Plaintiff	)	Wrongful Death Action (28U.S.C. §1346(b)(1))
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

1. Plaintiff Joshua S. Kirkpatrick, as Personal Representative of the Estate of Alison Marie Kirkpatrick, brings this Complaint against the United States of America pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §1346(b)(1).
2. Plaintiff has exhausted his claim by filing the standard form 95 with the Defendant by and through the Office of the General Counsel, US Department of Health & Human Services, which was received by them on September 13, 2019, and having received no response from them and the six-month investigation period has expired.

### **INTRODUCTION**

3. This action seeks damages for the death of Alison Marie Kirkpatrick as a result of medical negligence of the Mosaic Medical clinic in Bend, Oregon, which are federal employees of the U.S. Health and Human Services Department. These employees and agents of the United States were acting within the scope of their federal employ at the time of the medical negligence and would be liable to Plaintiff under Oregon law.

### **JURISDICTION AND VENUE**

4. This court has jurisdiction over this claim against the United States for money damages pursuant to 28 U.S.C. §1346(b)(1).
5. The acts or omissions giving rise to the claim occurred in the City of Bend, Oregon. Venue is therefore proper under 28 U.S.C. §1402(b)(1).

### **PARTIES**

6. Plaintiff is the duly appointed representative of the Estate of Alison Marie Kirkpatrick who was survived by her husband, her parents, and her five children.
7. Defendant United States of America is sued for the wrongful death of Alison Marie Kirkpatrick as a result of the medical negligence of the Mosaic Medical clinic, Bend, Oregon, with said employees and agents of Mosaic Medical clinic deemed as federal employees of the U.S. Health and Human Services Department falling under the FTCA and making the United States of America liable therein.

### **ALLEGATIONS**

8. At all material times, Alison Marie Kirkpatrick was a patient of and receiving medical services of the Mosaic Medical clinic in Bend, Oregon.
9. For several years prior to September 21, 2017, Alison Marie Kirkpatrick complained to a physician assistant of Mosaic Medical clinic of low back problems with sciatic involvement into her left leg and occasional numbness and tingling down her leg and into her foot. Despite these repeated complaints of low back with radicular problems into her left leg to Mosaic Medical, Mosaic Medical failed to transfer her care to a physician, failed to refer Alison Marie Kirkpatrick to a medical specialist, and failed to order any imaging tests although Alison Marie Kirkpatrick repeatedly enquired as to what could be done to alleviate her problems.
10. Thereafter and after having received advice by her physical therapist, Alison Marie Kirkpatrick requested Mosaic Medical to refer her for imaging tests of her low back which were conducted on September 21, 2017, revealing a large heterogeneous mass with associated calcifications of her left lumbosacral junction and extending into her left L5-S1 neural foramen revealing malignancy and metastases in her liver, pulmonary nodules, and low back areas.
11. Thereafter, Alison Marie Kirkpatrick was diagnosed with cancer throughout her body and she passed away from the cancer on October 22, 2018.

### **CAUSES OF ACTION NEGLIGENCE**

12. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

13. Alison Marie Kirkpatrick was a patient of Defendant and Defendant owed Alison Marie Kirkpatrick the duty to exercise that standard of care that would be reasonably prudent within the medical community and Defendant deviated from that standard of care by its failure to refer Alison Marie Kirkpatrick to a licensed physician within its facility, refer her to a medical specialist outside of the clinic, and failed to refer her to imaging tests for these problems. All of these actions deviated from the standard of care in properly diagnosing, treating, and referring Alison Marie Kirkpatrick for medical services dealing with her problems to her low back into her left leg in a timely manner.
14. Defendant breached their duty to exercise that standard of care and as a substantial factor, Alison Marie Kirkpatrick sustained economic and non-economic damages for her pain, suffering, and death all to her damage in the sum of \$2,250,000.

#### **LOSS OF CHANCE**

15. Plaintiff incorporates by reference the allegations in the preceding paragraphs.
16. As a direct result of Defendant's failure to exercise the standard of care that you would reasonably expect within the medical community, Alison Marie Kirkpatrick lost her chance of treating and surviving from said cancerous condition.

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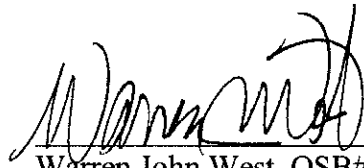
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**PRAYER FOR RELIEF**

17. Plaintiff requests a judgment against Defendant for her economic damages for past and future diminished earning capacity and for her non-economic damages of her physical pain and mental suffering in death, all in a sum of \$2,250,000.

DATED this 22<sup>nd</sup> day of April, 2020.

A handwritten signature in black ink, appearing to read "Warren John West", is written over a horizontal line.

Warren John West, OSB#733224  
Attorney for Plaintiff